

J9K7QUP

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
3 -----x

4 UNITED STATES OF AMERICA,

5 v.

18 Cr. 827 (GHW)

6 SONGHUA QU,

7 Defendant.
8 -----x

9
10 New York, N.Y.
11 September 20, 2019
12 1:15 p.m.
13

14 Before:

15 HON. GREGORY H. WOODS
16 District Judge
17

18 APPEARANCES
19

20 GEOFFREY S. BERMAN
21 United States Attorney for the
22 Southern District of New York
23 BY: DANIEL NESSIM
24 Assistant United States Attorney
25

26 RICHARD PALMA
27 Attorney for Defendant
28

29 ALSO PRESENT: Victor Chang, Mandarin Interpreter
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1 (In open court)

2 (Case called)

3 MR. NESSIM: Good afternoon, your Honor. Daniel
4 Nessim for the government.

5 THE COURT: Good.

6 MR. PALMA: Good afternoon, your Honor. For
7 Mr. Songhua Qu, Richard Palma. I would also like to bring to
8 your Honor's attention that Mr. Qu's son, Dilling Qu, is
9 present in the courtroom. He has assisted throughout my
10 representation of Mr. Qu.

11 THE COURT: Thank you. Good.

12 So, good afternoon, Mr. Qu. Now, before we go any
13 further, let me note for the record that we're using the
14 services of an interpreter here today. Mr. Qu, please let me
15 know if you have any difficulty hearing or understanding
16 anything that I or anyone else in the room or the interpreter
17 is saying to you.

18 Can you hear and understand me clearly?

19 THE DEFENDANT: Yes.

20 THE COURT: Thank you. Good. Thank you very much.

21 Now, I have been informed that you wish to plead
22 guilty to Counts One and Two of the indictment that's numbered
23 18 Cr. 827. Is that correct?

24 THE DEFENDANT: Yes.

25 THE COURT: Thank you.

J9K7QUP

1 Now, before I accept your guilty plea, I'm going to
2 ask you a number of questions so that I can establish to my
3 satisfaction that you wish to plead guilty because you are in
4 fact guilty and not for some other reason, and also to ensure
5 that you know what it is that you will be giving up if you
6 choose to proceed and enter a guilty plea in this matter.

7 If you don't understand any of my questions, or if you
8 would like to consult with your lawyer at any time or for any
9 reason, please just let me know. I would be happy to give you
10 as much time as you would like to confer with your lawyer at
11 any point during today's conference, and I would be happy to
12 clarify any of my questions if it would be helpful for you.

13 So, because I'm going to be asking you a number of
14 questions, I'd like to ask you to please stand to take an oath
15 to answer my questions truthfully?

16 THE DEFENDANT: Yes, sir.

17 (Defendant sworn)

18 THE COURT: You can be seated. So, Mr. Qu, you are
19 now under oath, which means that if you answer any of my
20 questions falsely, you can be prosecuted for the separate crime
21 of perjury or making false statements. The government would
22 have the right to use any statements that you give under oath
23 against you in such a prosecution. Do you understand that?

24 THE DEFENDANT: Yes.

25 THE COURT: Thank you. So, first, can I please ask

J9K7QUP

1 you what is your full name?

2 THE DEFENDANT: My last name is Qu. My first name is
3 Songhua.

4 THE COURT: Thank you. And how old are you?

5 THE DEFENDANT: I was born on April the 2nd, 1962.

6 THE COURT: Thank you.

7 Where were you born?

8 THE DEFENDANT: I was born in China.

9 THE COURT: Thank you. Are you a United States
10 citizen?

11 THE DEFENDANT: No.

12 THE COURT: Thank you.

13 How far did you go in school?

14 THE DEFENDANT: I finished the first grade of middle
15 school.

16 THE COURT: Thank you.

17 Can you please describe for me briefly your employment
18 experience.

19 THE DEFENDANT: You mean in China and also in the
20 United States?

21 THE COURT: Yes, please, just briefly.

22 THE DEFENDANT: In China I operated and worked in
23 noodle shops. In the U.S. I worked in supermarkets.

24 THE COURT: Thank you.

25 Have you ever been treated or hospitalized for any

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1 mental illness?

2 THE DEFENDANT: No, never.

3 THE COURT: Are you currently or have you recently
4 been under the care of a physician, psychiatrist or
5 psychologist?

6 THE DEFENDANT: No.

7 THE COURT: Are you currently or have you recently
8 been hospitalized or treated for drug addiction?

9 THE DEFENDANT: No.

10 THE COURT: Within the past 24 hours, have you used or
11 taken any alcohol, drugs or medication?

12 THE DEFENDANT: None.

13 THE COURT: Thank you.

14 Is your mind clear today?

15 THE DEFENDANT: Yes.

16 THE COURT: Do you understand what is happening in
17 this proceeding?

18 THE DEFENDANT: Yes.

19 THE COURT: Thank you.

20 Have you received a copy of the indictment that is
21 pending against you?

22 THE DEFENDANT: Yes.

23 THE COURT: Have you had enough of a chance to discuss
24 with your lawyer the case in general and, in particular, the
25 charges to which you intend to plead guilty and any possible

J9K7QUP

1 defenses to those charges?

2 THE DEFENDANT: Yes.

3 THE COURT: Thank you.

4 Has your lawyer explained to you the consequences of
5 entering a plea of guilty?

6 THE DEFENDANT: Yes.

7 THE COURT: Are you fully satisfied with your lawyer's
8 representation of you?

9 THE DEFENDANT: Yes.

10 THE COURT: Thank you.

11 Let me turn to counsel for defendant. Counsel, have
12 you discussed this matter with your client?

13 MR. PALMA: Repeatedly, your Honor.

14 THE COURT: Thank you.

15 Is he capable of understanding the nature of these
16 proceedings?

17 MR. PALMA: Yes, he has. Yes, he is.

18 THE COURT: Thank you.

19 Counsel, do either of you have any doubt as to the
20 defendant's competence to plead at this time?

21 MR. NESSIM: No, your Honor.

22 MR. PALMA: I have no doubt, your Honor.

23 THE COURT: Thank you.

24 On the basis of the defendant's responses to my
25 questions, my observations of his demeanor here in court, and

J9K7QUP

1 the representations of counsel, I find that the defendant is
2 competent to enter a plea of guilty at this time.

3 Now, before we turn to your plea, I'm going to explain
4 certain constitutional rights that you have. I do this because
5 these are rights that you will be giving up if you choose to
6 proceed and enter a guilty plea in this matter.

7 Please listen carefully to what I'm about to say, and
8 if you don't understand something, please stop me. I would be
9 happy to clarify any of my questions or explain the matter more
10 fully; and, as I said earlier, I will be happy for you to
11 confer with your counsel for as long as you like at any point
12 during today's conference.

13 So, first, you have the right to plead not guilty to
14 the charges against you contained in the indictment. Do you
15 understand that?

16 THE DEFENDANT: Yes.

17 THE COURT: If you did plead not guilty, you would be
18 entitled to a speedy and public trial by a jury on the charges
19 against you contained in this indictment. Do you understand
20 that?

21 THE DEFENDANT: Yes.

22 THE COURT: At a trial you would be presumed to be
23 innocent, and the government would be required to prove you
24 guilty by competent evidence beyond a reasonable doubt before
25 you could be found guilty. Do you understand that?

J9K7QUP

1 THE DEFENDANT: Yes.

2 THE COURT: A jury of 12 people would have to agree
3 unanimously that you were guilty, and you would not have to
4 prove that you were innocent if you were to go to trial. Do
5 you understand that?

6 THE DEFENDANT: Yes.

7 THE COURT: At trial, and at every stage of your case,
8 you would be entitled to be represented by a lawyer. If you
9 could not afford a lawyer, one would be appointed for you at
10 public expense, that is, free of cost. Do you understand that?

11 THE DEFENDANT: This I did not quite understand.

12 THE COURT: Thank you.

13 So, you have the right to a free lawyer in this case.
14 Do you understand that?

15 THE DEFENDANT: Yes.

16 THE COURT: Thank you.

17 So, you need not worry. To the extent that you wish
18 to proceed to trial in this case, you would be entitled to a
19 free lawyer who would represent you throughout the proceedings.
20 Do you understand that?

21 THE DEFENDANT: Yes.

22 THE COURT: Thank you.

23 So, during a trial the witnesses for the government
24 would have to come to court and testify in your presence. Your
25 lawyer could cross-examine the government's witnesses and

J9K7QUP

1 object to evidence offered by the government. Do you
2 understand that?

3 THE DEFENDANT: Yes.

4 THE COURT: At trial you would also have the
5 opportunity to offer evidence on your own behalf if you wished
6 to do so, and you would have the right to compel witnesses to
7 come to court to testify in your defense. Do you understand
8 that?

9 THE DEFENDANT: Yes.

10 THE COURT: At a trial, you would have the right to
11 testify if you chose to do so, but you would also have the
12 right not to testify. And if you decided not to testify, no
13 one, including the jury, could draw any inference or suggestion
14 of guilt from the fact that you did not testify. Do you
15 understand that?

16 THE DEFENDANT: Yes.

17 THE COURT: Do you understand that by pleading guilty,
18 you are giving up your right to seek suppression -- that is,
19 exclusion from introduction in evidence at any trial -- of any
20 evidence against you that the government may have obtained
21 improperly?

22 THE DEFENDANT: Yes.

23 THE COURT: If you were convicted at a trial, you
24 would have the right to appeal that verdict. Do you understand
25 that?

J9K7QUP

1 THE DEFENDANT: Yes.

2 THE COURT: Thank you.

3 Now, even now as you are preparing to enter this plea
4 you have the right to change your mind and plead not guilty,
5 and to go to trial on the charges against you contained in this
6 indictment. Do you understand that?

7 THE DEFENDANT: Yes.

8 THE COURT: If you plead guilty, you will also have to
9 give up your right not to incriminate yourself. I say that
10 because I expect that later during today's proceeding I will
11 ask you questions about what you did in order to satisfy myself
12 that you were guilty as charged, and you will have to admit and
13 acknowledge your guilt. Do you understand that?

14 THE DEFENDANT: Yes.

15 THE COURT: Thank you.

16 So, if you plead guilty, and if I accept your plea,
17 you will give up your right to a trial and the other rights
18 that we have just discussed -- other than your right to a
19 lawyer, which you have regardless of whether or not you plead
20 guilty -- but there would be no trial, and I will enter a
21 judgment of guilty and a sentence on the basis of your plea.
22 There will be no appeal with respect to whether the government
23 could use the evidence that it has against you, or with respect
24 to whether you did or did not commit these crimes. Do you
25 understand that?

J9K7QUP

1 THE DEFENDANT: Yes.

2 THE COURT: Thank you very much.

3 So, we have just discussed a number of important
4 rights that you have. Did you understand each and every one of
5 those rights?

6 THE DEFENDANT: Yes.

7 THE COURT: Thank you.

8 And are you willing to give up your right to a trial
9 and the other rights that I've just discussed with you?

10 THE DEFENDANT: Yes.

11 THE COURT: Thank you.

12 So, let me ask, I understand that you've received a
13 copy of the indictment. Can I ask, have you read it or has it
14 been translated for you?

15 THE DEFENDANT: Yes, I read it.

16 THE COURT: Thank you.

17 Do you understand that Count One charges that from at
18 least in or about January 2016, up to and including July 2018,
19 in the Southern District of New York and elsewhere, you and
20 others known and unknown conspired to traffic in counterfeit
21 goods and services in violation of 18 U.S.C. Section 2320? Do
22 you understand that's the nature of the charge against you in
23 Count One of the indictment?

24 THE DEFENDANT: Yes.

25 THE COURT: Thank you.

J9K7QUP

Counsel for the United States, can I ask you to please state the elements of that offense.

MR. NESSIM: Yes, your Honor. If this case were to proceed to trial, the government would need to prove the following elements beyond a reasonable doubt: First, that two or more persons agreed to try to accomplish a common and unlawful plan to traffic in counterfeit goods as charged in Count Two of the indictment -- and I can explain those elements in a few moments, your Honor -- second, that the defendant knowingly and willfully participated in that conspiracy; and, third, that in advancing, furthering or carrying out the scheme, the defendant or his coconspirators committed an overt act.

THE COURT: Thank you.

Let me ask the defendant, do you understand that Count Two charges that from at least in or about January 2016, up to and including July 2018, in the Southern District of New York and elsewhere, you knowingly and intentionally trafficked and attempted to traffic in goods and services, and that you knowingly used a counterfeit mark on and in connection with those goods and services, in violation of 18 U.S.C. Section 2320 and 2? Do you understand that that's the nature of the charge against you in Count Two?

THE DEFENDANT: Yes.

THE COURT: Thank you.

J9K7QUP

1 Counsel for the United States, can I ask you to please
2 state the elements of that offense.

3 MR. NESSIM: Yes, your Honor. As to Count Two, the
4 government would need to prove beyond a reasonable doubt that
5 the defendant intentionally trafficked in goods and that those
6 goods involved the knowing use of a counterfeit mark, which
7 means a mark likely to cause confusion, to cause mistake or to
8 deceive relative to a registered trademark.

9 THE COURT: Good. Thank you very much.

10 So, let me ask the defendant, do you understand that
11 if you were to go to trial for each of these charges, that the
12 government would have to prove all of the substantive elements
13 of each of the charges beyond a reasonable doubt?

14 THE DEFENDANT: Yes, I do.

15 THE COURT: Thank you. Now, I'm going to tell you the
16 maximum possible penalty for these crimes. The maximum means
17 the most that could possibly be imposed. It does not mean that
18 it's what you will necessarily receive, but you have to
19 understand by pleading guilty you're exposing yourself to the
20 possibility of receiving any combination of punishments up to
21 the maximum that I'm about to describe. Do you understand
22 that?

23 THE DEFENDANT: Yes.

24 THE COURT: Thank you.

25 So, first, I'm going to tell you about the possible

J9K7QUP

1 restrictions on your liberty.

2 The maximum term of imprisonment for Count One is ten
3 years, which could be followed by up to three years of
4 supervised release. The maximum term of imprisonment for Count
5 Two is ten years, which could also be followed by up to three
6 years of supervised release.

7 If you are sentenced to a term of supervised release,
8 you will be subject to supervision by the probation office.
9 There will be rules of supervised release that you will have to
10 follow, and if you violate those rules, you can be returned to
11 prison without a jury trial to serve additional time, with no
12 credit for time that you served in prison as a result of your
13 sentence, and no credit for any time spent on post-release
14 supervision.

15 You should also understand that there is no parole in
16 the federal system, and that if you are sentenced to prison,
17 you will not be released early on parole. Do you understand
18 that?

19 THE DEFENDANT: Yes, I do.

20 THE COURT: Thank you.

21 Second, in addition to these restrictions on your
22 liberty, the maximum possible punishment also includes certain
23 financial penalties: The maximum allowable fine for each of
24 Counts One and Two is \$2 million, or twice the gross monetary
25 gain derived from the offense, or twice the gross monetary loss

J9K7QUP

1 to persons other than yourself, whichever is greater. Again,
2 that is for each of the two counts.

3 In addition, I can order restitution to any person or
4 entity injured as a result of your criminal conduct. I can
5 also order you to forfeit all property derived from the offense
6 or used to facilitate the offense.

7 And, finally, I must also order a mandatory special
8 assessment of \$100 for each offense to which you pleaded
9 guilty.

10 Counsel, before I proceed, do either of you wish to
11 correct or amend any of the penalties that I've just described?

12 MR. NESSIM: No, your Honor.

13 MR. PALMA: Your Honor, I just want to reconfirm the
14 maximum penalty is ten years on each count?

15 THE COURT: For each count, yes.

16 Thank you.

17 Let me turn to the defendant. Do you understand that
18 these are the maximum possible penalties?

19 THE DEFENDANT: Yes, I do.

20 THE COURT: Thank you. Do you understand that it is
21 possible, taking both of the counts together, that you could be
22 sent to prison for a total of up to 20 years of imprisonment?

23 THE DEFENDANT: Yes, I do.

24 THE COURT: Thank you.

25 Now, I understand that you are not a United States

J9K7QUP

1 citizen, so let me ask: Do you understand that as a result of
2 your guilty plea there may be adverse effects on your
3 immigration status, including further detention following
4 completion of your sentence?

5 THE DEFENDANT: Yes, I do.

6 THE COURT: Do you understand that as a result of your
7 guilty plea, you may be removed from the United States, denied
8 citizenship and denied admission to the United States in the
9 future?

10 THE DEFENDANT: Yes.

11 THE COURT: Thank you.

12 Do you understand that your guilty plea and conviction
13 make it very likely that your removal from the United States is
14 presumptively mandatory?

15 THE DEFENDANT: Yes, I do.

16 THE COURT: Thank you.

17 Did you discuss the possible immigration consequences
18 of your plea with your lawyer?

19 THE DEFENDANT: Yes.

20 THE COURT: Do you understand that in the event your
21 conviction results in adverse effects on your immigration
22 status, that you will still be bound by your plea of guilty and
23 that you will not be allowed to withdraw your plea, regardless
24 of any advice that you received from your counsel or any others
25 regarding the immigration consequences of your plea?

J9K7QUP

1 THE DEFENDANT: Yes, I do.

2 THE COURT: Thank you.

3 Do you understand that as a result of your guilty
4 plea, you may lose certain valuable civil rights -- to the
5 extent that you have them now or might obtain them now -- such
6 as the right to vote, the right to hold public office, the
7 right to serve on a jury, and the right to possess any kind of
8 firearm?

9 THE DEFENDANT: Yes.

10 THE COURT: Are you serving any other sentence, either
11 state or federal?

12 THE DEFENDANT: No.

13 THE COURT: Thank you.

14 To your knowledge, are you being prosecuted in state
15 court currently for any crime?

16 THE DEFENDANT: No.

17 THE COURT: Thank you.

18 Do you understand that if your lawyer or anyone else
19 has attempted to predict what your sentence will be, that their
20 prediction could be wrong?

21 THE DEFENDANT: Yes.

22 THE COURT: Do you understand that the sentence
23 ultimately imposed may be different from any estimate your
24 attorney may have given you?

25 THE DEFENDANT: Yes, I know.

J9K7QUP

1 THE COURT: That's good, because no one can give you
2 any assurance of what your sentence will be, because I'm going
3 to decide your sentence? And I'm not going to do that now; do
4 you understand that?

5 THE DEFENDANT: Yes, I do.

6 THE COURT: Thank you.

7 Now, before I impose your sentence, I will review a
8 presentence report prepared by the probation department. You
9 and your lawyer, and the lawyer for the government, will have
10 the opportunity to challenge the facts that are reported in the
11 presentence report and also the application of the advisory
12 sentencing guidelines recommended by the probation officer.

13 I am obliged to do my own independent calculation of
14 the advisory sentencing guidelines range that applies in your
15 case. After your initial advisory range has been determined, I
16 have the authority in some circumstances to depart upward or
17 downward from that range.

18 Ultimately, I will determine what a reasonable
19 sentence is for you based on a number of sentencing factors
20 contained in the statute found at 18 United States Code Section
21 3553(a). That may result in the imposition of a sentence that
22 is either greater or lesser than the advisory sentencing
23 guidelines range.

24 THE DEFENDANT: Yes.

25 THE COURT: Thank you.

J9K7QUP

1 Do you understand all of that?

2 THE DEFENDANT: Yes, I do.

3 THE COURT: Thank you.

4 Have you and your attorney discussed how the advisory
5 sentencing guidelines might apply to your case?

6 THE DEFENDANT: Yes, my lawyer explained all that to
7 me.

8 THE COURT: Good. Thank you.

9 So, even if your sentence is different from what your
10 lawyer or anyone else has told you it might be, even if it's
11 different from what you expect or from what is contained in the
12 letter that you received from the United States, you will still
13 be bound by your guilty plea, and you will not be allowed to
14 withdraw your plea of guilty. Do you understand that?

15 THE DEFENDANT: Yes.

16 THE COURT: Thank you.

17 So, we've just discussed a number of important
18 consequences of your plea. Do you understand all of the
19 possible consequences of your plea that we've just discussed?

20 THE DEFENDANT: Yes.

21 THE COURT: Thank you.

22 Now, I understand that there is no plea agreement
23 between the defendant and his counsel and counsel for the
24 United States. So, let me turn to counsel for defendant.
25 Counsel, did the prosecution make any formal plea agreement

J9K7QUP

1 offers to the defendant?

2 MR. PALMA: The answer is, yes, we negotiated it, and
3 then after considering all of the factors we elected not to
4 accept the plea agreement.

5 THE COURT: Thank you.

6 So, the terms of the plea offer were fully conveyed to
7 the defendant; is that correct?

8 MR. PALMA: Yes.

9 THE COURT: Thank you.

10 And he has determined not to take the offer that was
11 made by the United States; is that right?

12 MR. PALMA: We made that decision together. He
13 followed my advice.

14 THE COURT: Thank you. Good.

15 So, instead of a plea agreement, pursuant to the
16 instructions of the Second Circuit in United States v.
17 Pimintel, the United States has prepared a letter setting forth
18 its view of what the sentencing guidelines will be at
19 sentencing. I'm going to mark this letter as Court Exhibit 1,
20 and I will provide it to the United States to retain in its
21 possession.

22 Before I hand it forward, I would like to ask the
23 defendant some questions about this letter. The letter is
24 dated September 20, 2019 to Mr. Palma from assistant United
25 States attorney Daniel Nessim.

J9K7QUP

1 So, let me ask the defendant: Have you seen this
2 letter?

3 THE DEFENDANT: Yes, I did, and it was explained to me
4 also.

5 THE COURT: Thank you.

6 Has it been translated for you, or did you read it?

7 THE DEFENDANT: Yes, they did translate it, so I have
8 the translation to read.

9 THE COURT: Thank you.

10 Did you discuss it with your lawyer?

11 THE DEFENDANT: Yes, we went over the letter.

12 THE COURT: Thank you.

13 Do you fully understand what the government is saying
14 in this letter?

15 THE DEFENDANT: Yes.

16 THE COURT: Thank you.

17 Now, in the letter, among other things, the government
18 indicates its belief that the applicable range under the
19 advisory sentencing guidelines is 24 to 30 months' imprisonment
20 and that the applicable fine range is \$10,000 to \$2 million.

21 Now, I want to stress that the calculations summarized
22 in this letter constitutes the government's view of what the
23 sentencing guidelines calculations are. They are not binding
24 on you and, more importantly, they're not binding on me.

25 As I told you earlier, I have my own independent

J9K7QUP

1 obligation to determine what the appropriate guidelines range
2 is in this matter and then what the appropriate sentence is.

3 Now, I'm not saying that I will come up with any range that's
4 different than the one contained in the government's letter. I
5 may agree or I may disagree. I don't know at this point.

6 What is important is that you understand, in any
7 event, whatever sentence I impose, I will not let you withdraw
8 your plea, even if the ranges I determine is higher than the
9 range that the government has stated in its Pimintel letter or
10 higher than you expected. Do you understand that?

11 THE DEFENDANT: Yes.

12 THE COURT: Thank you.

13 So, let me ask, has anyone made any promise to you or
14 offered you any inducement to plead guilty?

15 THE DEFENDANT: Yes, I do come to plead guilty on my
16 own.

17 THE COURT: Thank you.

18 Has anyone made you any promise in connection with
19 this plea?

20 THE DEFENDANT: No, not at all.

21 THE COURT: Thank you.

22 Has anyone threatened you or forced you to plead
23 guilty?

24 THE DEFENDANT: No.

25 THE COURT: Thank you.

J9K7QUP

1 Has anyone made a promise to you regarding what your
2 sentence will be?

3 THE DEFENDANT: No.

4 THE COURT: Thank you.

5 So, I told you earlier in this proceeding that there
6 would come a time when I would ask you to tell me what it is
7 you did that makes you believe you are guilty of each of these
8 two offenses. Now is that time. Would you please tell me what
9 it is that you did that makes you believe that you are guilty
10 of each of these offenses.

11 MR. PALMA: And, your Honor, for the record, I've
12 prepared a written statement that Mr. Qu will be reading into
13 the record. He will be reading it. It's translated in
14 Mandarin. It's a summary of what we are prepared today to
15 state what he has done in this case.

16 THE COURT: Thank you. Please proceed.

17 THE DEFENDANT: In 2018 I helped my son, Fangrang Qu,
18 on several occasions to move sneakers from a warehouse in
19 Queens. At the time I believed these sneakers were imitation
20 sneakers of a named brand. I believed these sneakers were
21 imitations because on the occasions when I entered the
22 warehouse I observed piles of labels and individuals sewing
23 these labels onto the sneakers. In addition, at the time of my
24 arrest, I knew my son stored these sneakers at our home in
25 Hicksville, New York.

J9K7QUP

1 THE COURT: Thank you.

2 So, first, counsel, let me ask the defendant: When
3 you did those things, did you know what you were doing was
4 wrong and illegal?

5 THE DEFENDANT: Yes, wrong, and they are illegal.

6 THE COURT: Thank you.

7 Counsel for defendant, do you know of any valid
8 defense that would prevail at trial, or do you know of any
9 reason why your client should not be permitted to plead guilty?

10 MR. PALMA: There is no valid defense, and there is no
11 reason that I can think of why he is not prepared to plead
12 guilty today.

13 THE COURT: Thank you.

14 Counsel for the United States, are there any
15 additional questions you would like me to ask this defendant?

16 MR. NESSIM: No, your Honor. But I would just proffer
17 as to an overt act, that members of this conspiracy -- the
18 defendant proffered to several overt acts, but an overt act
19 included a coconspirator Jian Min Huang placing a phone call to
20 allow for the sale of a portion of those counterfeit sneakers.

21 In addition, the government would proffer that
22 evidence at trial would establish as to venue that members of
23 the conspiracy moved both finished and unfinished sneakers
24 through the Southern District of New York.

25 THE COURT: Thank you.

J9K7QUP

1 Counsel for defendant, do you accept the government's
2 proffer as it relates to venue?

3 MR. PALMA: Yes.

4 THE COURT: Thank you. Good.

5 So, counsel, let me turn to each of you. Do you agree
6 that there is a sufficient factual predicate for a guilty plea
7 at this time?

8 MR. NESSIM: Yes, your Honor.

9 MR. PALMA: Yes, your Honor.

10 THE COURT: Thank you.

11 Does either of you know of any reason that I should
12 not accept the defendant's plea of guilty?

13 MR. NESSIM: No.

14 MR. PALMA: There is none, your Honor.

15 THE COURT: Thank you.

16 Let me ask the defendant to please stand. Would you
17 please stand. Thank you.

18 Count One charges that from at least in or about
19 January 2016 up to and including July 2018, in the Southern
20 District of New York and elsewhere, you and others known and
21 unknown conspired to traffic in counterfeit goods and services
22 in violation of 18 U.S.C. Section 2320. How do you plead to
23 this count?

24 THE DEFENDANT: I plead guilty.

25 THE COURT: Thank you.

J9K7QUP

1 Count Two charges that from at least in or about
2 January 2016, up to and including July 2018, in the Southern
3 District of New York and elsewhere, you knowingly and
4 intentionally trafficked, and attempted to traffic in goods and
5 services, in that you knowingly used a counterfeit mark on and
6 in connection with those goods and services, in violation of
7 Title 18 United States Code Sections 2320 and 2. How do you
8 plead to this count?

9 THE DEFENDANT: I plead guilty.

10 THE COURT: Thank you.

11 There are forfeiture allegations in the indictment
12 with respect to each of Counts One and Two. Do you admit the
13 forfeiture allegations with respect to each of Counts One and
14 Two of the indictment?

15 THE DEFENDANT: Yes, I do.

16 THE COURT: Thank you.

17 It is the finding of the Court in this case that the
18 defendant is fully competent and capable of entering an
19 informed plea, that the defendant is aware of the nature of the
20 charges and the consequences of the plea, and that the plea of
21 guilty is a knowing and voluntary plea, supported by an
22 independent basis in fact containing each of the essential
23 elements of each of the offenses. The plea is therefore
24 accepted, and the defendant is now adjudged guilty of that
25 offense.

J9K7QUP

1 Thank you very much. You can be seated.

2 So, let me turn to the defendant. The probation
3 department will want to interview you in connection with the
4 presentence report that it will prepare, as I was describing it
5 earlier.

6 Counsel for defendant, do you wish to be present for
7 any interview in connection with that?

8 MR. PALMA: For sure. And to order a Mandarin
9 interpreter.

10 THE COURT: I direct that the government provide the
11 probation office with its factual statement within the next
12 seven days. I order that no interview take place unless
13 counsel for defendant is present.

14 Counsel, please arrange for the defendant to be
15 interviewed by the probation department within the next 14
16 days.

17 Just a brief note for the defendant. If you choose to
18 speak to the probation department, I would ask that you make
19 sure that anything that you choose to say be truthful and
20 accurate. The presentence report is very important for me in
21 deciding what the appropriate sentence is to impose; I will
22 read the report very carefully.

23 You and your counsel have the right to examine the
24 report and to comment on it both to the probation officer who
25 is preparing the report and also to me at the time of

J9K7QUP

1 sentencing, so I just want to urge you to review that report
2 and to discuss it with your lawyer prior to sentencing.

3 If there are any mistakes in it, please point them out
4 to your counsel so that he can bring them to the attention of
5 the probation officer who is writing the report, or to my
6 attention at or before sentencing.

7 I'm going to set a sentencing date now.

8 Mr. Daniels, will you please propose a date.

9 DEPUTY COURT CLERK: Yes, Judge. Friday, January 24
10 at 4 p.m.

11 MR. PALMA: Your Honor, may I just consult my diary?

12 THE COURT: Please do.

13 MR. PALMA: Your Honor, I have a child care issue on
14 Fridays in the afternoon, so if it could be scheduled in the
15 morning on a Friday, or Monday.

16 THE COURT: Thank you. We can find another date.

17 DEPUTY COURT CLERK: Tuesday, January 28 at 4 p.m.

18 THE COURT: Counsel, does that date and time work for
19 each of you?

20 MR. NESSIM: That works for the government, your
21 Honor.

22 MR. PALMA: That does work. That's the 28th at 4
23 p.m., Tuesday.

24 THE COURT: Yes.

25 MR. PALMA: Thank you.

J9K7QUP

1 THE COURT: Good. Thank you very much. So,
2 sentencing will take place at that date and time.

3 I understand that the defendant is out on pretrial
4 release at this time. What is the position of each of the
5 parties regarding his release conditions pending sentencing?
6 First, counsel for defendant?

7 MR. PALMA: Thank you, your Honor. First of all, I
8 discussed this with the government pursuant to the Court's
9 instructions, individual practices, and it's my understanding
10 that the government does not oppose my request that you keep
11 him out on bail. That's number one.

12 Number two, this is a nonviolent crime; there was no
13 mandatory prison term; his ties are to the United States. Not
14 only are his sons living here, and his daughter-in-laws, and
15 his grandchildren, but his elderly parents live in Corona,
16 Queens, who he takes care of or was taking care of every day
17 until he was arrested in this case.

18 So, although he is a Chinese immigrant who has been in
19 the country I think about ten years and got status through his
20 mother's petition, it's my understanding he hasn't been back to
21 China. He has surrendered his passport to pretrial, has been
22 in full compliance with pretrial, and he is under electronic
23 monitoring. He only comes out of the house to visit me and on
24 one or two occasions I've written to the Court for cultural
25 events that the Court permitted him to attend. But for those

J9K7QUP

1 reasons I request respectfully, your Honor, that you maintain
2 his bail status.

3 THE COURT: Thank you. What's the position of the
4 United States on that application?

5 MR. NESSIM: No objection to maintaining the
6 defendant's bail status.

7 THE COURT: Good. Thank you very much.

8 So, I'm going to maintain the defendant's current bail
9 status. I find that based on the defendant's proffer and his
10 conduct to date while on pretrial release that I can conclude
11 that he is not likely to flee or to pose a danger to the safety
12 of other persons or the community. As a result, I will
13 maintain the current conditions of his bond.

14 Before I discuss that issue briefly with the
15 defendant, counsel, let me just remind you each with respect to
16 the sentencing itself to look at my individual rules of
17 practice, as you already have. They contain rules regarding
18 the sentencing process. In particular, they contain rules
19 regarding the deadlines for sentencing submissions. The
20 principal issue is that they are due no later than two weeks
21 prior to sentencing for defendant and one week prior to
22 sentencing for the United States.

23 So, let me turn back to the defendant. We have just
24 discussed the continuation of the conditions of your bond
25 pending sentencing, and I have agreed to permit you to remain

J9K7QUP

1 at liberty pending sentencing. I'd like to confirm a couple of
2 things with you, however. Do you understand that all of the
3 conditions on which you have been released up until now
4 continue to apply?

5 THE DEFENDANT: Yes.

6 THE COURT: Thank you. And do you understand that a
7 violation of any of those conditions can have very serious
8 consequences for you at the time of sentencing?

9 THE DEFENDANT: Yes.

10 THE COURT: Thank you.

11 So, you must be in this courtroom for sentencing at
12 the date and time set, unless I change the date by written
13 order. If you are not here at that time, you will be guilty of
14 a separate crime, that is, bail jumping, and you will be
15 subject to a fine and/or prison term in addition to whatever
16 sentence you may receive for the crime to which you have just
17 pleaded guilty.

18 Do you understand that?

19 THE DEFENDANT: Yes, I do.

20 THE COURT: Good. Thank you very much.

21 So, thank you, counsel. Is there anything else that
22 we should take up before we adjourn? Counsel for the United
23 States?

24 MR. NESSIM: No, your Honor. Thank you.

25 THE COURT: Thank you.

J9K7QUP

1 Counsel for defendant?

2 MR. PALMA: Nothing else at this time, your Honor.

3 THE COURT: Good. Thank you very much.

4 This proceeding is adjourned.

5 (Adjourned)

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